

EXHIBIT 13

13 - DrAlexanderVSergienko_Rough

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 CAPELLA PHOTONICS, INC.)
5 Plaintiff,) Case No.:
6 vs.) 2:20-cv-00076-JRG
7 FUJITSU NETWORK)
8 COMMUNICATIONS, INC.,)
9 Defendant.)
10 CAPELLA PHOTONICS, INC.,)
11 Plaintiff,) Case No.:
12 vs.) 2:20-cv-00077-JRG
13 INFINERA CORPORATION, et al.,)
14 Defendants.)
15

16 DEPOSITION OF:
17 ALEXANDER VLADIMIR SERGIENKO, Ph.D.
18 THURSDAY, APRIL 15, 2021
19 12:06 p.m. Eastern Standard Time
20

21 REPORTED BY:
22 Vickie Blair

13 - DrAlexanderVSergienko_Rough
23 CSR No. 8940, RPR-CRR
24 JOB NO. 4542988
25 PAGES 1 - 192

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1 Deposition of ALEXANDER VLADIMIR SERGIENKO, Ph.D., the
2 witness, taken on behalf of the Plaintiff, on Thursday,
3 April 15, 2021, 12:06 p.m. Eastern Standard Time, before
4 VICKIE BLAIR, CSR No. 8940, RPR-CRR.

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6 APPEARANCES OF COUNSEL VIA ZOOM:

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7 ALSO PRESENT:
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13 - DrAlexanderVSergienko_Rough

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08:42:20 1 Remote Deposition; Thursday, April 15, 2021

08:42:20 2 12:06 p.m. Eastern Standard Time

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09:06:06 4

09:06:09 5 VIDEOGRAPHER MILLER: Good afternoon.

09:06:09 6 We're going on the record at 12:06 p.m.

09:06:12 7 Eastern Standard Time on April 15, 2021.

09:06:18 8 Please note the microphones are very, very

09:06:20 9 sensitive, and may pick up whispering; however, please

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09:06:24 10 speak slowly with your voices up all the times. Please
09:06:28 11 silence all cell phones and place away from microphones
09:06:31 12 as they can interfere with deposition audio.

09:06:35 13 Audio and video recording will continue to
09:06:38 14 take place unless all parties agree to go off the
09:06:38 15 record.

09:06:38 16 This is media number one of the video
09:06:41 17 recorded deposition of Dr. Alexander Sergienko taken by
09:06:47 18 counsel for defendants in the matter of Capella
09:06:50 19 Photonics, Inc., vs. Fujitsu Network Communications,
09:06:50 20 Inc. Case number 2:20-cv-00076-JRG.

09:07:04 21 Second caption taken by counsel for
09:07:06 22 defendants in the matter of Capella Photonics, Inc.,
09:07:11 23 vs. Infinera Corporation Tellabs, Inc., case number
09:07:11 24 2:20-cv-00077-JRG, filed in United States District
09:07:11 25 Court of the Eastern District of Texas, Marshall

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09:07:11 1 Division.

09:07:11 2 This deposition is taking place via
09:07:40 3 Veritext Virtual and all participants are attending
09:07:41 4 remotely.

09:07:41 5 My name is Brandon Miller from the firm
09:07:44 6 Veritext Legal Solutions. I'm the videographer.

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09:07:48 7 The court reporter is Vickie Blair from

09:07:49 8 the firm Veritext Legal Solutions.

09:07:51 9 I'm not related to a party in this action

09:07:54 10 nor am I financially interested in the outcome.

09:07:57 11 Counsel and all present in the room and

09:07:58 12 everyone attending remotely will now state their

09:08:01 13 appearances and affiliation for the record, beginning

09:08:03 14 with the noticing attorney, and the witness can be

09:08:05 15 sworn in.

09:08:06 16 Thank you.

09:08:06 17 MR. GAUSTAD: This is John Gaustad of

09:08:08 18 Baker Botts LLP on behalf of the Infinera defendants.

09:08:11 19 MR. BROWAND: And this is Nathaniel

09:08:15 20 Browand from Milbank LLP on behalf of defendant Fujitsu

09:08:21 21 Network Communications, Inc.

09:08:31 22 THE REPORTER: Mr. Eisenberg, you need to

09:08:33 23 unmute.

09:08:34 24 MR. EISENBERG: This is Jason Eisenberg

09:08:36 25 from Sterne Kessler Goldstein & Fox on behalf of

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09:08:41 1 Capella Photonics, Inc.

09:08:43 2 MR. BECKER: Sorry, I was on mute.

09:08:45 3 This is Robert Becker from Manatt, Phelps

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09:08:48 4 & Phillips on behalf of Capella, Inc., and the witness.

09:08:50 5 I also want to lodge an objection. There
09:08:52 6 was an agreement with Fujitsu's counsel that this
09:08:57 7 deposition would not proceed, and it was surprising for
09:09:00 8 Fujitsu to announce that it was proceeding with the
09:09:02 9 deposition, despite our agreement, and so I object to
09:09:12 10 that.

09:09:12 11 MR. BROWAND: And I'll -- I'll state on
09:09:18 12 the record that the notice of Dr. Sergienko's
09:09:21 13 deposition was noticed in both the Fujitsu and Infinera
09:09:23 14 cases, and there's only a single report at issue in
09:09:25 15 both cases, and the deposition is properly recorded in
09:09:28 16 both cases, despite the party's agreement regarding
09:09:36 17 other expert depositions in the Capella vs. Fujitsu
09:09:40 18 case.

09:09:50 19 THE REPORTER: Mr. Gaustad, you need to
09:09:51 20 unmute.

09:09:55 21 MR. GAUSTAD: Oh, I have no further
09:09:56 22 comment.

09:09:57 23 THE REPORTER: Shall I swear the witness?

09:10:01 24 MR. GAUSTAD: Yes, please.

09:10:10 25

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1 ALEXANDER VLADIMIR SERGIENKO, Ph.D.,
2 having been first duly sworn, was
3 examined and testified as follows:

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5 EXAMINATION

6 BY MR. GAUSTAD:

09:10:21 7 Q Going morning, Dr. Sergienko.

09:10:25 8 A Good morning.

09:10:25 9 Q Would you please state your full name for
09:10:26 10 the record.

09:10:26 11 A Alexander Vladimir Sergienko.

09:10:29 12 Q And I've put what's been marked as
09:10:32 13 Exhibit 1 to the Shared Exhibit folder.

09:10:35 14 Could you please pull up Exhibit 1.

09:10:37 15 A Yes, I have it.

09:10:37 16 (Deposition Exhibit # was marked for
09:10:37 17 identification and is attached hereto.)

09:10:38 18 BY MR. GAUSTAD:

09:10:38 19 Q And do you recognize Exhibit 1?

09:10:39 20 A Yes, I do.

09:10:40 21 Q And what is Exhibit 1?

09:10:43 22 A Exhibit 1, it's defendants notice of
09:10:45 23 deposition of expert Dr. Alexander V Mr. Sergienko.

09:10:50 24 Q And towards the top of the first page do

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10:01:14 22 MR. BECKER: Object. Form.

10:01:15 23 THE WITNESS: That's what this paragraph

10:01:16 24 states.

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10:01:16 1 BY MR. GAUSTAD:

10:01:17 2 Q Did the patent office make a mistake when

10:01:18 3 it made this finding?

10:01:20 4 MR. BECKER: Object. Form.

10:01:22 5 THE WITNESS: Again, I cannot claim was it

10:01:24 6 a mistake or not a mistake. It's beyond my competency

10:01:29 7 to evaluate the actions of the board because it's a

10:01:32 8 legal entity, and I am a technical expert.

10:01:34 9 But all this has been considered, all

10:01:36 10 these materials and all the proceedings, have been

10:01:39 11 considered during the reissue of the patent we're

10:01:42 12 supposed to discuss today, so I consider this -- this

10:01:45 13 is the valid document existent in records, but the

10:01:52 14 patent has been reissued considering those documents.

10:01:56 15 BY MR. GAUSTAD:

10:01:56 16 Q So you're offering an opinion in this case

10:01:58 17 that contradicts a prior patent office finding on the

10:02:02 18 same issue; correct?

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10:02:03 19 A I --

10:02:03 20 MR. BECKER: Object. Form.

10:02:04 21 THE WITNESS: I'm offering an opinion

10:02:05 22 about technical matter present in all the documents

10:02:11 23 involved in the discussion in my declaration here my

10:02:21 24 report, so I'm evaluating technical matter. I'm not

10:02:24 25 evaluating actions of the board or any other entity.

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10:02:27 1 I'm evaluating technical content and the relationship

10:02:30 2 between different technical elements and claims of the

10:02:33 3 patent.

10:02:35 4 BY MR. GAUSTAD:

10:02:36 5 Q Objection nonresponsive.

10:02:37 6 The opinion that you're offering in this

10:02:39 7 case contradicts the patent office's previous finding

10:02:43 8 on this issue; correct?

10:02:44 9 MR. BECKER: Object. Form.

10:02:50 10 THE WITNESS: I'm offering an opinion

10:02:52 11 about technical matter existent and regarding the valid

10:02:59 12 patent existent on records I've challenged so far and

10:03:05 13 technical matter is my area of expertise.

10:03:07 14 Legal proceedings I cannot express opinion

10:03:13 15 about that that's why I cannot say anything about the

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10:03:17 16 validity or not validity of the patent board decision.

10:03:20 17 My opinion about the technical matter

10:03:25 18 still stays the same as it was before and I'm happy to

10:03:28 19 explain this.

10:03:32 20 BY MR. GAUSTAD:

10:03:32 21 Q Objection nonresponsive could the court

10:03:35 22 reporter, please, read back the question.

10:03:52 23 (Record read as follows:

10:02:37 24 "Q The opinion that you're

10:02:38 25 offering in this case contradicts the

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10:02:41 1 patent office's previous finding on this

10:02:43 2 issue; correct?")

10:03:56 3 THE WITNESS: My opinion is still the same

10:04:03 4 as before, and it is based on the evaluation of the

10:04:07 5 patent existent right now issued patent by the patent

10:04:13 6 office, and during the issue of that patent, all the

10:04:17 7 proceedings we're discussing right now have been

10:04:20 8 considered and evaluated. They were not an obstacle to

10:04:25 9 reissue the patent, and I'm providing an opinion about

10:04:28 10 the valid patent, I consider them -- this document, is

10:04:32 11 a part of the record, but patent -- the reissue of the

10:04:38 12 patent states that my opinion is not contradictory and

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10:04:48 13 reissue was after this document.

10:04:50 14 BY MR. GAUSTAD:

10:04:51 15 Q Is it your opinion that your opinion that
10:04:53 16 you're offering in this case is not contradictory of
10:04:58 17 the patent office's decision on this issue?

10:05:01 18 A Which decision are you --

10:05:02 19 MR. BECKER: Object. Form.

10:05:03 20 THE WITNESS: Well, I'm talking it's to
10:05:07 21 the contradictory to the legally issued and valid today
10:05:10 22 patent.

10:05:12 23 BY MR. GAUSTAD:

10:05:12 24 Q How is it not contradictory?

10:05:15 25 A Because --

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10:05:18 1 MR. BECKER: Object. Form.

10:05:19 2 THE WITNESS: The patent has been reissued
10:05:21 3 with evaluation of all the documents we just discussed
10:05:24 4 and quoted from, the patent examination has been done,
10:05:27 5 including all those documents, and the patent was
10:05:30 6 reissued, which means it's valid argument, it's valid
10:05:35 7 technical matter.

10:05:37 8 That's the last decision. This decision
10:05:39 9 was prior to that.

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14:53:38 4 Doctor, please. Is there anything that counsels or the

14:53:40 5 court reporter would like to put on the record only

14:53:42 6 before I close the record?

14:53:46 7 MR. BECKER: No, thank you.

14:53:47 8 MR. GAUSTAD: No, thank you.

14:53:48 9 VIDEOGRAPHER MILLER: Okay, thank you.

14:53:48 10 Standby. This concludes today's deposition of

14:53:50 11 Dr. Alexander Sergienko. Total media used was six.

14:53:54 12 Going off the record at 5:53 p.m. Eastern

14:53:57 13 standard time.

14:53:59 14 (Whereupon, at 2:53 p.m., the

15 deposition of ALEXANDER VLADIMIR

16 SERGIENKO, Ph.D., was adjourned.)

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